

## Assembly Bill No. 1284

### CHAPTER 239

An act to add and repeal Section 367.3 of the Public Utilities Code, relating to energy resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 9, 2003. Filed with  
Secretary of State August 11, 2003.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1284, Leslie. Direct transactions: cost responsibility surcharges.

Under existing law, the Public Utilities Commission regulates electrical corporations. The Public Utilities Act requires the commission to authorize direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers to acquire service from certain electricity suppliers after a period of time to be determined by the commission until the Department of Water Resources no longer supplies electricity under that law. Under existing law, the commission has imposed a cost responsibility surcharge on retail end-use customers that continue to receive service in a direct transaction.

This bill, until January 1, 2009, would authorize the commission, if it finds it is in the public interest and there is no feasible alternative, to defer or waive the collection of a portion of the cost responsibility surcharge otherwise applicable to a qualifying direct transaction customer, as defined, to the extent necessary to mitigate certain conditions described in an application and declaration submitted by the customer to the commission. The bill would require the commission to issue a decision on such an application on or before September 4, 2003.

The bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. 367.3 is added to the Public Utilities Code, to read:

367.3. (a) For purposes of this section, a “qualifying direct transaction customer” means any customer that meets each of the following requirements:

(1) The customer entered into a direct transaction with an electric service provider for electric service for a plant or facility in California,

by executing a contract prior to January 1, 2000, that extended service through at least February 1, 2001.

(2) The plant or facility was, after February 1, 2001, involuntarily returned to the electrical corporation for electrical service, as a result of the electric service provider terminating electrical service under the direct transaction contract.

(3) The plant or facility entered into a new direct transaction with an electric service provider for the plant or facility's electric service and a direct access service request (DASR) was submitted within 90 days from the date the plant or facility's most recent direct transaction contract was involuntarily terminated.

(4) The plant or facility continuously participated in an interruptible or curtailable service program.

(5) The plant or facility had an average total cost for all aspects of electric service, as a percentage of sales, in excess of 8 percent, for the five years beginning January 1, 1996, and continuing to December 31, 2000.

(6) The plant or facility had an average net profit margin as a percentage of sales of greater than 2 percent, for the five years beginning January 1, 1996, and continuing to December 31, 2000.

(7) The average total electric service cost as a percentage of sales, exceeded the average net profit margin as a percentage of sales for the plant or facility, for the five years beginning January 1, 1996, and continuing to December 31, 2000.

(8) The customer submits an application to the commission pursuant to this section within seven days of the operative date of the act adding this section, accompanied by a declaration from an officer, director, or owner stating that unless relieved of the expense of the direct access cost responsibility surcharge, the plant or facility that purchases electric service under the direct transaction contract, faces certain and imminent closure.

(b) If the commission finds it is in the public interest and there is no feasible alternative, the commission may defer or waive the collection of a portion of the cost responsibility surcharge otherwise applicable to a qualifying direct transaction customer, to the extent necessary to mitigate the conditions described in paragraph (8) of subdivision (a). That deferral or waiver may not result in any shifting of costs to bundled service customers, either immediately or over time, or delay the full and timely recovery of costs from direct access customers as a group.

(c) The commission shall issue a decision on an application submitted pursuant to this section on or before September 4, 2003. Notwithstanding subdivisions (d) and (g) of Section 311, the



commission may issue its decision in less than 30 days following filing and service of the proposed decision.

(d) The commission shall require an electrical corporation to defer collection of a portion of the cost responsibility surcharge otherwise applicable to a qualifying direct transaction customer while an application submitted pursuant to this section is pending before the commission and, if the application is granted, until the deferral or waiver is operative.

(e) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the public's best interest is served, and to preserve numerous jobs at facilities that face certain and imminent closure due to the high cost of electricity as a result of being involuntarily returned to bundled electric service during the energy crisis, it is necessary that this act take effect immediately.

